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HOUSE BILL 2526

By Cooper B

AN ACT to amend Tennessee Code Annotated, Title 37, relative to juvenile courts and proceedings.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 37-1-126, is amended by deleting the section in its entirety and by substituting instead the following:

(a) In delinquency hearings or in hearings in which the child is alleged upon three (3) or more court proceedings to be unruly and not amenable to treatment or rehabilitation as specified in § 37-1-132(b), a party is entitled to representation by legal counsel at all stages of any proceedings under this part, and if, as a needy person, such party is unable to employ counsel, to have the court provide counsel for such party. If a party appears without counsel, the court shall ascertain whether such party knows of such party's right thereto and such party's right to be provided with counsel by the court if such party is a needy person. The court may continue the proceeding to enable a party to obtain counsel and shall provide counsel for an unrepresented needy person upon such party's request. In all delinquency hearings, counsel must be provided for a child not represented by such child's parent, guardian, guardian ad litem or custodian. If

the interest of two (2) or more parties conflict, separate counsel may be provided for each of them.

(b) "Needy person" is one who, at the time of requesting counsel, is unable without undue financial hardship to provide for full payment of legal counsel and all other necessary expenses for representation.

(c) (1) A child, who is provided with court-appointed counsel pursuant to this section, shall be assessed by the court at the time of appointment a nonrefundable administrative fee in the amount of fifty dollars (\$50.00). The administrative fee shall be assessed only one (1) time per case and shall be waived or reduced by the court upon a finding that the child and the child's parents or legal guardians lack financial resources sufficient to pay the fee in such amount. The fee may be increased by the court to an amount not in excess of two hundred fifty dollars (\$250) upon a finding that the child or the child's parents or legal guardians possess sufficient financial resources to pay the fee in such increased amount. The administrative fee shall be payable, at the court's discretion, in a lump sum or in installments; provided, the fee shall be paid prior to disposition of the case or within two (2) weeks of appointment of counsel, whichever shall first occur. Prior to disposition of the case, the clerk of the court shall inform the judge whether the administrative fee has been collected. Failure to pay the administrative fee assessed by the court shall not reduce or in any way affect the rendering of services by court-appointed counsel; provided, that willful failure to pay such fee may be weighed by the court when determining appropriate disposition of the child if the court finds that the child engaged in delinquent or unruly conduct and is, therefore, in need of treatment and/or rehabilitation.

(2) The administrative fee shall be separate from and in addition to any other contribution or recoupment assessed pursuant to law for defrayal of costs associated with the provision of court-appointed counsel. The clerk of the court shall retain a commission of five percent (5%) of each dollar of administrative fees collected and shall transmit the remaining ninety-five percent (95%) of each such dollar to the state treasurer for deposit in the state's general fund.

(3) If the administrative fee is not paid prior to disposition of the case, then the fee shall be collected in the same manner as costs are collected; provided, that upon disposition of the case, moneys paid to the clerk, (including any cash bond posted by or on behalf of the child), shall be allocated to taxes, costs and fines and then to the administrative fee and any recoupment ordered. The administrative fee and any recoupment or contribution ordered for the services of court-appointed counsel shall apply and shall be collected even if the charges against the child are dismissed.

(4) As part of the clerk's regular monthly report, each clerk of court, who is responsible for collecting administrative fees pursuant to this section, shall file a report with the court and with the Tennessee administrative director of the courts. The report shall indicate the following:

(A) Number of children for whom the court appointed counsel pursuant to this section;

(B) Number of children for whom the court waived the administrative fee;

(C) Number of children from, or on behalf of, whom the clerk collected administrative fees;

(D) Total amount of commissions retained by the clerk from such administrative fees;

(E) Total amount of administrative fees forwarded by the clerk to the state treasurer; and

(F) Such other information as required by the administrative director of the courts.

SECTION 2. This act shall take effect July 1, 2000, the public welfare requiring it.